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97TH CONGRESS }
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SENATE

{ REPORT
No. 97-201

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

OCTOBER 6 (legislative day, SEPTEMBER 9), 1981.—Ordered to be printed

Mr. DENTON, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 391]

The Committee on the Judiciary, to which was referred the bill (S. 391) to improve the intelligence system of the United States, and for other purposes, having considered the same, by a vote of 17 ayes and 1 vote of "present", reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 391 and its companion measure, H.R. 4, is to strengthen the intelligence capabilities of the United States by amending the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants and sources, and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

HISTORY OF THE BILL

In recent years, members of the House and Senate Intelligence Committees, along with other colleagues in the Congress, have become increasingly concerned about the systematic effort by a small group of Americans, including some former intelligence agency employees, to disclose the names of covert intelligence agents. Numerous proposals have been made in this Congress for a criminal statute to punish such disclosure of the identities of intelligence agents.

Senator Bentsen introduced identities protection proposals in the 94th and 95th Congresses but no action was taken. On October 17, 1979, Representative Boland, Chairman of the House Intelligence Committee, introduced H.R. 5615, the Intelligence Identities Protection Act,

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the effect of directly impeding should be found not guilty. To establish to the satisfaction of the jury, even if the jury believed that the individual could be found guilty. Section 601(c), one who discloses information which would tend to indicate that the individual is or was involved in espionage and disclosure. For other things, the expulsion of the individual by the CIA. On the other hand, one who is of covert agents merely by the States or urging executive or this section. The Administration witnesses

understand that the Department version of the bill is the activity which is in the House bill, and that the primary advantages to the Department's witness will be of Subcommittee on Security. S. 391, May 8, 1981, at

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at the objective standard could pass constitutional or due process challenge. preferable to the specific current House version of H R. 4. (Transcript of Hearing on S. 391,

between Senator Biden and

ied before the House Independent of Justice would support for the wording of her bill would be a great improvement, and both bills would be enforceable. (Transcript of Terrorism Hearing on

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sure I understand. You support either version. You would support either of Subcommittee on Security. S. 391, May 8, 1981, at

ator.

Mr. Willard stated at the conclusion of the Committee's adoption of the Biden amendment that the bill is both "enforceable and constitutional." (The Washington Post, Wednesday, October 7, 1981, at p. A3.)

SECTION 602—DEFENSE AND EXCEPTIONS

Section 602(a) states that:

It is a defense to a prosecution under section 601 that before the commission of the offense with which the defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

The words "publicly acknowledged" are intended to encompass such public activities as official publications of the United States, or official statements or press releases made by those acting on behalf of the United States, which specifically acknowledge an intelligence relationship. The United States has "revealed" an intelligence relationship if it has disclosed information which names, or leads directly to the identification of, an individual as a covert agent. Information does not lead directly to such an identification if the identification can be made only after an effort to seek out and compare, cross-reference, and collate information from several publications or sources which in themselves evidence an effort by the United States to conceal this identity.

Section 601(b) (1) and (2) ensure that a prosecution cannot be maintained under section 601(a), (b), or (c), upon theories of aiding and abetting, misprision of a felony, or conspiracy, against an individual who does not actually disclose information unless the government can meet the proof requirement of section 601(c). A reporter to whom is disclosed, illegally, the identity of a covert agent by a person prosecutable under section 601(a) or (b) would most likely not be engaging in the requisite course of conduct, because he would not likely be engaged in an effort to expose covert agents without more of a showing of the necessary intent.

Section 602(c) is intended to make clear that disclosures made directly to the House or Senate Intelligence Committees are not criminal offenses.

Section 602(d) states that "it shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent." The word "solely" is intended to make clear that such an individual cannot be subject to the penalties of section 601 simply on the grounds that he revealed his own identity as a covert agent.

Of course, this provision does not relieve the individual from any other agreements or obligations he may have incurred.

SECTION 603—PROCEDURES FOR ESTABLISHING COVER FOR INTELLIGENCE OFFICERS AND EMPLOYEES

Section 603 requires the President to establish procedures to ensure that undercover intelligence officers and employees receive effective cover. To this end, the section also stipulates that the procedures shall provide that those departments and agencies of the government, other

than the Peace Corps, designated by the President to provide assistance for cover arrangements shall provide whatever assistance the President deems necessary to effectively maintain the secrecy of such officers and employees.

This provision of the bill does not stipulate which elements of government shall provide assistance or what that assistance must be. Such procedures are exempted from any requirement for publication or disclosure. The Committee is not addressing in this provision the relationships between intelligence agencies and private organizations or institutions.

SECTION 604—EXTRATERRITORIAL JURISDICTION

This section is intended to remove any doubt of the Congress' intent to authorize the federal government to prosecute a United States citizen or permanent resident alien for an offense under section 601 committed outside the United States.

SECTION 605—PROVIDING INFORMATION TO CONGRESS

This section is intended to make clear that no provision of the legislation authorizes the Executive branch to withhold information from the Congress.

SECTION 606—DEFINITIONS

Section 606(1) defines "classified information." It means identifiable information or material which has been given protection from unauthorized disclosure for reasons of national security pursuant to the provisions of a statute or executive order.

Section 606(2) defines "authorized." When used with respect to access to classified information it means having authority, right, or permission pursuant to the provisions of a statute, executive order, directive of the head of any department or agency engaged in foreign intelligence or foreign counterintelligence activities, order of any United States court, or the provisions of any rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

Thus, the bill would not impose criminal penalties for disclosures made pursuant to a federal court or to either of the intelligence oversight committees, or for disclosures otherwise authorized by statute, executive order, or departmental directive.

Section 606(3) defines "disclose." It means to communicate, provide, impart, transmit, transfer, convey, publish or otherwise make available.

Section 606(4) defines "covert agent." The term encompasses three distinct groups. In the first group are officers or employees of (or members of the Armed Forces assigned to) an intelligence agency whose identities are classified and who are serving outside the United States at the time of the disclosure or have so served within the previous five years.

In the second group are U.S. citizens in the United States who are agents or informants of the foreign counterintelligence or foreign counterterrorism components of the FBI, or U.S. citizens outside the U.S. who are agents of, or informants or sources of operational assistance to an intelligence agency. In each instance the intelligence rela-